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Challenging Changing Legal Definitions of Family in Same-Sex Domestic Violence

Shannon Little*

I. INTRODUCTION

One called repeatedly, threatening to “ruin” the victim by telling scandalous stories about the victim’s sexual practices and health to police, family, friends, and colleagues.¹ Another’s threat was more physical, and it included brandishing a knife, grabbing the victim’s face, and pushing.² Another engaged in an all-out battle: punching the victim in the face, stomach, and head, and kicking the victim in the shins.³ The situations vary, but the common thread is that the perpetrators and the victims were men in homosexual relationships, and law enforcement and the legal structures designed to end domestic violence failed the victims.

Domestic violence law has made great strides from the time when husbands were allowed to beat their wives with “a switch no larger than his thumb.”⁴ Courts no longer explicitly hold that the best response to violence is to “draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.”⁵ Federal and state criminal/civil laws outlaw and attempt to prevent domestic violence, also referred to as “intimate partner violence,” “domestic abuse,” and “partner abuse.”⁶ In the 1970s, the feminist movement focused on developing an understanding of domestic violence as a product of patriarchy and devoted energy to funding and

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1. Richardson v. Easterling, 878 A.2d 1212, 1215 n.4 (D.C. Cir. 2005).

2. Moore v. Bentley, No. 03-AP-1003, 2004 WL 2804785, at *1 (Ohio Ct. App. Sept. 23, 2004).

3. DAVID ISLAND & PATRICK LETELLIER, MEN WHO BEAT THE MEN WHO LOVE THEM: BATTERED GAY MEN AND DOMESTIC VIOLENCE 236-39 (Harrington Park Press 1991).

4. State v. Oliver, 70 N.C. 44, 45 (1874).

5. *Id.* at 45.

6. Riyah Lilith, *Reconsidering the Abuse that Dare Not Speak Its Name: Criticism of Recent Legal Scholarship Regarding Same Gendered Domestic Violence*, 7 MICH. J. GENDER & L. 181, 182 (2001).

staffing domestic violence shelters and working for the passage of protective domestic violence laws.⁷ Recently, the vast majority of states have broadened their domestic violence statutes to include non-married heterosexual couples, dating relationships, children, and same-sex relationships.⁸ While laws have *added* language to cover the first three situations, most state legislation has been amended to include same-sex relationships by *removing* references to gender.

Though the attempt to include same-sex relationships within domestic violence law is laudable, the perhaps unintended consequence has been to remove the initial analysis of domestic violence as a product of patriarchy and power. Same-sex relationships may exhibit a “gendered” character that plays out in abuse. Moreover, forms of abuse and family situations unique to same-sex relationships remain unaddressed by some states’ laws. Additionally, persistent homophobia in society and the legal system disadvantages people in same-sex relationships who seek legal protection. In order to provide adequate protection and resources for victims and survivors of domestic violence who are in same-sex relationships, legislatures must revisit their domestic violence laws. Laws should be amended to include explicit language incorporating relationships of all types and to account for broader understandings of the abusive acts themselves.

This Note will first discuss the prevalence of, and unique issues raised by, same-sex domestic violence. It will then analyze amendments to domestic violence laws to incorporate same-sex couples and non-spousal situations. The Note goes on to use case studies to show how these laws have not fulfilled their aims. Finally, this Note will suggest alternative language that might better address domestic violence in same-sex relationships.

II. REALITIES OF DOMESTIC VIOLENCE IN THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY

The lesbian, gay, bisexual, and transgender (LGBT) community is by no means immune from domestic violence. Studies suggest that domestic violence occurs in LGBT relationships at about the same rate as heterosexual relationships: Approximately eleven percent of lesbian and gay male relationships self-report domestic violence.⁹ A recent survey in Hong Kong found that about sixteen percent of gays and lesbians experienced domestic abuse, compared to 9.6 percent of heterosexual

7. Ruth Colker, *Marriage Mimicry: The Law of Domestic Violence*, 47 WM. & MARY L. REV. 1841, 1851-52 (2006).

8. *Id.* at 1857-58.

9. Joanna Bunker Rohrbaugh, *Domestic Violence in Same-Gender Relationships*, 44 FAM. CT. REV. 287, 290 (2006).

relationships.¹⁰ Other studies compared rates within the LGBT community and found higher rates of domestic violence among gay males than lesbians.¹¹ While yet another study concluded that violence is more likely to be perpetrated by men regardless of whether they are in same-sex or opposite-sex relationships.¹² For example, the 1997 report by the National Coalition of Anti-Violence Programs (NCAVP), a network of twenty-four community-based gay, lesbian, bisexual and transgender anti-violence organizations, found that women living with opposite-sex partners were nearly twice as likely to report experiences with violence as were women living with same-sex partners.¹³ Similarly, men living with same-sex partners were also almost twice as likely to report experiencing violence at the hands of their partners than were men cohabiting with opposite-sex partners.¹⁴

Regardless of the exact numbers, there are thousands of people across the country subject to same-sex partner abuse. The NCAVP compiled data on 6523 incidents in eleven cities in 2003.¹⁵ In San Francisco, Community United Against Violence and Queer Asian Women's Services of the Asian Women's Shelter issued a report documenting 366 incidents in 2005.¹⁶ Those numbers are likely to represent only a fraction of the actual incidents. The NCAVP report notes that high numbers in Los Angeles may be attributable to an active and capable anti-violence program and more equitable legal treatment of LGBT domestic violence survivors.¹⁷ Areas with fewer resources for the LGBT community most likely have lower reporting rates.

Victims and survivors of domestic violence in LGBT relationships may have a very different experience and set of needs than those in heterosexual relationships. Same-sex abuse can take new forms, such as threats to "out"

10. *Gays 60 percent more prone to domestic violence, survey says*, INDO-ASIAN NEWS SERVICE (Hong Kong), Feb. 15, 2007, available at http://news.webindia123.com/news/ar_showdetails.asp?id=702150875&cat=&n_date=20070215.

11. Lilith, *supra* note 6, at 199-200.

12. PATRICIA TJADEN & NANCY THOENNES, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN, FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, NCJ 181867 at 30, (July 2000). See also KATHARINE BARTLETT, ANGELA HARRIS & DEBORAH RHODE, GENDER AND LAW, 627 (3rd ed. 2002).

13. BARTLETT ET AL., *supra* note 12, at 627.

14. *Id.*

15. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER DOMESTIC VIOLENCE: A 2003 UPDATE (2003), available at http://www.ncavp.org/common/document_files/Reports/2003NCAVPDVRpt.pdf [hereinafter NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS].

16. COMMUNITY UNITED AGAINST VIOLENCE & QUEER ASIAN WOMEN'S SERVICES, LESBIAN, GAY, BISEXUAL AND TRANSGENDER SAN FRANCISCO 2005 DOMESTIC VIOLENCE REPORT SUMMARY: A REPORT FROM COMMUNITY UNITED AGAINST VIOLENCE AND QUEER ASIAN WOMEN'S SERVICES (2007), available at <http://www.cuav.org/docs/report%20-%20sf%20lgbt%202005%20dv%20summary.pdf>.

17. NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS, *supra* note 15, at 3.

a partner who is not public with her or his sexual identity.¹⁸ Sandra Lundy has described homophobia as "an extra weapon in [the abuser's] arsenal of terror."¹⁹ Because LGBT people may be more isolated from family or the larger community, these victims may have few places to go for support.²⁰ Furthermore, the LGBT community itself may either ostracize a victim who reports abuse or ignore the issue altogether.²¹ The community may refuse to acknowledge abuse out of fear that doing so will affirm negative stereotypes or detract from efforts to gain legal recognition for LGBT relationships.²² Researchers also suggest that some lesbians have a political objection to acknowledging that women can be abusers, since doing so shatters the "utopian" view of womanhood.²³

LGBT abuse victims may also have more difficulty accessing domestic violence resources than heterosexual victims. LGBT victims may be less willing to call police out of fear that they will face a homophobic reaction from the authorities.²⁴ A narrative about a violent incident between two gay men vividly demonstrates the vulnerable position that a same-sex victim may feel he or she is in: "I stand there, numbly staring at those two officers, wondering if they think I've been beating Stephen, because he looks absolutely terrified right now."²⁵ There are very few organizations dedicated to serving male victims of domestic violence, and many women's shelters will not take in lesbians, citing funding restrictions or the fear that lesbians will be a disruptive presence.²⁶ For these reasons, abuse is most likely under-reported. In the year after it hired an advocate to specifically address abuse in same-sex relationships, San Francisco's District Attorney's office reported a sixty-seven percent increase in incidents of violence in the LGBT community.²⁷ This indicates that societal homophobia creates a layer of oppression beyond that which an LGBT victim may suffer from his or her abuser.

Violence in same-sex relationships also holds an awkward place within common understandings of domestic violence. Where there is not a clear gender difference, law enforcement or others within the legal system cannot easily point to a "presumed" aggressor.²⁸ Where two women are

18. Rohrbaugh, *supra* note 9, at 293.

19. Sandra E. Lundy, Abuse that Dare Not Speak Its Name: Assisting Victims of Lesbian and Gay Domestic Violence in Massachusetts, 28 New Eng. L. Rev. 273, 282 (1993).

20. *Id.* at 285-86.

21. *Id.* at 286.

22. Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming a Domestic Sphere While Risking Negative Stereotypes*, 8 TEMP. POL. & CIV. RTS. L. REV. 325, 326 (1999).

23. Lundy, *supra* note 19, at 286.

24. Knauer, *supra* note 22, at 348.

25. ISLAND & LETELLIER, *supra* note 3, at 237-38.

26. Lundy, *supra* note 19, at 287-88.

27. Knauer, *supra* note 22, at 330.

28. *Id.* at 333.

involved, a battered women's shelter may struggle with whom to admit, and advocates cannot follow the tenet that the woman should always be believed.²⁹ Lastly, domestic violence protections grew out of a feminist movement focused on patriarchy and gender roles linked to biological sex.³⁰ Where maleness is not readily apparent and gender roles are non-existent or less clear to an outside observer, it may be difficult to incorporate a traditional understanding of domestic violence resulting from patriarchy.

As a result of uncertainty about the aggressor in the situation, courts often issue mutual restraining orders against both the LGBT abuser and the person complaining of abuse, reflecting a notion that the situation is one of mutual battering, where the violence is reciprocal and both partners are abusers and victims.³¹ This stems from a common misconception that abuse in LGBT relationships is "just fighting."³² Abusers may also exploit this myth by convincing their victims that self-defense and battering are synonymous, reinforcing feelings of guilt or self-doubt, or to obtain initial restraining orders despite themselves being the true aggressor.³³ Although mutual battering is raised as a defense in heterosexual situations, researchers argue that the problem is particularly pervasive in same-sex relationships.³⁴

III. GENDER-NEUTRAL DOMESTIC VIOLENCE LAWS EXTEND PROTECTION TO LGBT RELATIONSHIPS

Piecemeal judicial decisions and laws began to prohibit a husband from beating his wife in the late nineteenth century.³⁵ However, it was nearly one hundred years later before state and federal lawmakers began to seriously address issues of heterosexual domestic violence.³⁶ Criminal prosecution of abusers and civil protection orders ceased to be something seen as a threat to family privacy and became a mainstream policy by the mid-1980s.³⁷ Most states enacted laws covering married couples, and some extended their laws to include opposite-sex couples living together or in a marriage-like relationship.³⁸

Since the mid-1980s, many states have amended their statutes to cover broader classes of people, including those who are cohabiting but not

29. Knauer, *supra* note 22, at 334.

30. *Id.* at 334-35.

31. Lundy, *supra* note 19, at 283.

32. *Id.*

33. *Id.*

34. *Id.* See also Lilith, *supra* note 6, at 215.

35. Colker, *supra* note 7, at 1851.

36. *Id.*

37. *Id.* at 1854.

38. *Id.* at 1856.

married, those in dating relationships, and other family members.³⁹ Many statutes have become gender-neutral and encompass LGBT relationships.⁴⁰ However, five states — Delaware, Louisiana, North Carolina, Montana, and South Carolina — restrict their domestic violence laws to opposite-sex parties.⁴¹ For example, Delaware's civil statute covers "family," defined as husband and wife or cohabiting opposite-sex couple with a child in common, stepparents or stepchildren, or other relatives related by blood.⁴² The statute also covers former spouses or couples with children in common, regardless of whether they live together.⁴³ While no cases relating to same-sex domestic violence were found, the definition of family was read not to include stepgrandfathers, resulting in the overturning of a conviction for offensive touching by such a relative against his stepgranddaughter.⁴⁴ The court's reluctance to include an extended family member in its definition of "family" suggests that it will be unwilling to stretch the statute's language to include same-sex couples. Delaware's criminal statute offers a broader definition; it includes persons who cohabitated at the time of the offense, and has no requirement that the parties be of the opposite sex.⁴⁵

Louisiana's civil and criminal codes use a definition of "household member" limited to opposite-sex parties or children.⁴⁶ North Carolina follows a pattern similar to Delaware, restricting civil protections to opposite-sex partners and providing criminal remedies only if the parties live or have lived as if married.⁴⁷ Montana's civil and criminal laws extend to spouses or former spouses, persons with a child in common, and current or former long-term dating partners of the opposite sex.⁴⁸ South Carolina's civil and criminal domestic violence statutes cover spouses, former spouses, parties with children in common, or opposite-sex parties who live or have lived together.⁴⁹ All five of these states have statutory or constitutional language defining marriage as between members of the opposite sex.⁵⁰

39. Colker, *supra* note 7, at 1886-98.

40. *Id.*

41. DEL. CODE ANN. tit. 10, § 901(12) (2008); LA. REV. ST. ANN. § 14:35.3 (B)(2) (2007); N.C. GEN. STAT. § 50B-1(b)(6) (2005); MONT. CODE ANN. § 45-5-206(2)(b) (2007); S.C. CODE ANN. § 20-4-20 (1985 & Supp. 2007).

42. DEL. CODE ANN. tit. 10, § 901(12) (2008).

43. DEL. CODE ANN. tit. 10, § 1041(2)(b) (2008).

44. *Walt v. State*, 727 A.2d 836, 840 (Del. 1999).

45. DEL. CODE ANN. tit. 11, § 3906 (2007).

46. LA. REV. ST. ANN. § 14:35.3 (B)(2) (2007).

47. N.C. GEN. STAT. § 15A-534.1(a) (2005); N.C. GEN. STAT. § 50B-1(b)(6) (2005).

48. MONT. CODE ANN. § 45-5-206(2)(b) (2007).

49. S.C. CODE ANN. § 20-4-20 (1985 & Supp. 2007).

50. NAT'L CONFERENCE OF STATE LEG., SAME-SEX MARRIAGE, CIVIL UNIONS, AND DOMESTIC PARTNERSHIPS (2007), available at <http://www.ncsl.org/programs/cyf/samesex.htm>.

The remaining states use statutory language that could be construed to cover same-sex relationships. Many statutes extend to relationships that are "spouse-like," using that exact language, or require a long-term dating relationship, taking factors such as shared finances into account.⁵¹ The focus on marital relationships in these laws is a natural outgrowth of arguments made in the 1970s that domestic violence should be criminalized because it violates the important institution of family.⁵² When domestic violence laws were first enacted, only the more progressive states extended protections to unmarried, heterosexual women.⁵³ As they have become gender-neutral, many laws retain the focus on a committed, marriage-like relationship. For example, Indiana covers those who are "similarly situated to a spouse," and Massachusetts requires that parties be in a "substantive dating or engagement relationship."⁵⁴ Other states have a cohabitation requirement, similar to what is required for criminal liability in Delaware.⁵⁵

States also vary, although to a lesser extent, in the type of abuse their domestic violence laws cover. Some states list explicit offenses and include a residual clause under which courts can exercise discretion. For example, Delaware's family courts have jurisdiction over abuse, defined as physical assault, threats of such assault, property destruction, conduct leading to emotional distress, trespass, and "any other conduct which a reasonable person under the circumstances would find threatening or harmful."⁵⁶ Louisiana civil domestic violence protections extend to any physical or sexual abuse and any "abuse against the person," as defined by the state's criminal code; but protections are not limited to offenses defined in those sections.⁵⁷ Indiana more rigidly defines domestic violence as physical or sexual assault or threat thereof, or stalking.⁵⁸ California defines abuse as bodily injury or threat thereof, or sexual assault and references an explicit list of abusive behaviors: molesting; attacking; striking; stalking; threatening; sexually assaulting; battering; harassing; telephoning, including, but not limited to, annoying telephone calls; destroying personal property; contacting, either directly or indirectly, by mail or otherwise; coming within a specified distance of; or disturbing the peace.⁵⁹ In California, therefore, the abuser's conduct need not result in physical injury nor be inherently criminal.⁶⁰

51. Colker, *supra* note 7, at 1859.

52. *Id.* at 1856.

53. *Id.*

54. *Id.* at 1859.

55. *Id.* at 1861.

56. DEL. CODE ANN. tit. 10, § 1041(1) (2008).

57. LA. REV. ST. ANN. § 46-2132 (West 2006).

58. IND. CODE ANN. § 34-6-2-34.5 (West 1999 & Supp. 2007).

59. CAL. FAM. CODE § 6203 (West 2004).

60. *Conness v. Satram*, 18 Cal. Rptr. 3d 577, 580 (Cal. Ct. App. 2004).

Individual states have the bulk of oversight of domestic violence protections. However, the federal Violence Against Women Act of 1993 creates federal criminal offenses for traveling across state lines intending to kill, injure, harass, or intimidate a "spouse, intimate partner, or dating partner."⁶¹ The statute also prohibits causing the victim to travel across state lines through force, coercion or fraud, and increases punishment where the perpetrator has committed the crime of stalking or violated a state protective order.⁶² The reference to "dating partner" was added by a 2006 amendment, as the 1993 law only encompassed spouses or intimate partners.⁶³ While the federal law may be among the less-rigidly defined laws as to whom it will cover, it is restricted by the fact that it can only cover abuse that relates to interstate travel (or across tribal or maritime land).

IV. AT WHAT COST? SHORTFALLS OF A GENDER-NEUTRAL SYSTEM

While the vast majority of state courts now have jurisdiction over same-sex domestic violence, there are several ways in which the laws are less protective of the LGBT community than they are of heterosexual relationships. The legal system may be ill-equipped to deal with the types of abuse or vulnerability that can arise in LGBT relationships. Law enforcement and the courts may hold particular biases that prevent them from reaching good decisions in cases of abuse. Finally, there are potential problems with constitutionality where laws use vague language to cover same-sex relationships. The following section will address each of these issues in turn.

It should first be noted that even a perfect law will be unable to prevent the occurrence of all domestic abuse. Moreover, issuance of a civil protective order is by no means a guarantee that the survivor will not be abused again. Unfortunately, there are dozens of readily available examples of cases in which a domestic violence restraining order has done little to protect a victim from further, even fatal, abuse.⁶⁴

In *Town of Castle Rock v. Gonzales*, the U.S. Supreme Court held that a state law mandating arrests for restraining order violations did not create a right of enforcement.⁶⁵ In *Castle Rock*, the plaintiff, Jessica Gonzales, obtained a restraining order against her estranged husband.⁶⁶ Language

61. 18 U.S.C. § 2261(a)(1) (2006).

62. 18 U.S.C. § 2261 (a)(2) (2006); 18 U.S.C. 2261 (b)(6) (2006).

63. 18 U.S.C. § 2261 (2000 & Supp. 2007), *amended by* Pub. L. No. 109-162, § 116(a)(1) (Supp. 2006).

64. *See, e.g.* Ivy v. State, No. A-7744, 2003 Alaska App. LEXIS 12, at *2-3 (Alaska Ct. App. 2003); *People v. Rogers*, 68 P.3d 486, 493 (Colo. Ct. App. 2002); *Ennis v. State*, 137 P.3d 1095, 1098 (Nev. 2006).

65. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 760 (2005).

66. *Id.* at 751.

printed on the back of the order notified police that they should use “every reasonable means to enforce [the] restraining order. You shall arrest . . . the restrained person when you have information amounting to probable cause that the restrained person has violated or attempted to violate any provision of this order.”⁶⁷ One afternoon Gonzales’s husband took the couple’s three daughters, in violation of the visitation schedule set by the restraining order.⁶⁸ Gonzales called the police, who instructed her to wait several hours to see if her husband brought the girls back.⁶⁹ Gonzales subsequently called the police three more times and went to the station, but was unable to inspire them to take any action.⁷⁰ At 3:20 A.M., Gonzales’s husband arrived at the station and opened fire with a semi-automatic gun he had bought that evening.⁷¹ The police returned his gunfire, killing him.⁷² In the cab of the husband’s pickup truck police found the couple’s three daughters, whom the husband had already killed.⁷³ Despite these horrific facts, the Court ultimately concluded that a police officer must have discretion to find that a restraining order should not be enforced, despite probable cause to believe that the order has been violated.⁷⁴

With these shortcomings in mind, the following sections will show how even flawed legal protections against domestic violence may be denied to those in same-sex relationships. The following case studies will show that LGBT victims face unique barriers to protection, in addition to the shortcomings in domestic violence law that render all victims and survivors vulnerable.

A. A DIFFERENT KIND OF ABUSE

Michael Richardson, a medical doctor residing in Washington, D.C., was involved in a live-in, romantic relationship with Aaron Easterling.⁷⁵ Richardson obtained a civil protective order against Easterling under the District’s Intrafamily Offenses Act, based on allegations that Easterling threatened to call the police to report that Richardson was spreading communicable diseases, contacted the District’s Board of Medicine to make false statements regarding Richardson’s sexual conduct, contacted Richardson’s colleagues to disclose that Richardson was homosexual and allege he was knowingly spreading disease, and attempted to cash a forged check in Richardson’s name.⁷⁶ The temporary protective order prohibited

67. *Town of Castle Rock*, 545 U.S. at 752.

68. *Id.* at 753.

69. *Id.*

70. *Id.* at 753-54.

71. *Id.* at 754.

72. *Id.*

73. *Id.*

74. *Id.* at 761.

75. *Richardson v. Easterling*, 878 A.2d 1212, 1213-14 (D.C. Cir. 2005).

76. *Id.*

Easterling from harassing, stalking, threatening, or abusing Richardson, and from contacting Richardson himself or his colleagues.⁷⁷

Easterling moved to strike Richardson's petition for a permanent order arguing that, most importantly, Richardson was HIV-positive (as was Easterling) and that he had an ethical, if not legal, duty to report Richardson's behavior.⁷⁸ Easterling additionally argued that nothing alleged by Richardson fell within the explicit acts covered by the Intrafamily Offenses Act.⁷⁹ The trial court agreed with Easterling's second argument and dismissed the petition.⁸⁰ The court believed it could not issue a restraining order where "neither abuse nor violence has been alleged."⁸¹

The District of Columbia's Intrafamily Offenses Act, enacted in 1994, provides that the Family Division may issue a permanent protective order if it finds that a criminal offense has been perpetrated by a person who is related to the victim by blood, legal custody, marriage, having a child in common, or having cohabited.⁸² The statute also covers those who are in, or who have been in, a romantic relationship, even if not sexual, provided the victim resides in the District and the offense took place there.⁸³ The Act broadly covers any act punishable as a criminal offense.⁸⁴

The trial court held that Richardson had not alleged abusive or violent conduct, and therefore failed to state a claim under which the protective order could be granted.⁸⁵ The court reached this conclusion even after Richardson amended his complaint to allege that Easterling repeatedly contacted Richardson, his family, and his colleagues, threatening to "ruin" Richardson's professional and personal life.⁸⁶ Easterling allegedly demanded money, threatened to harass Richardson in his new home, and threatened to distribute flyers and leaflets containing scandalous accusations.⁸⁷ Richardson also asserted that Easterling would continue to contact his family, friends, and colleagues regardless of legal proceedings, in order to let them know "what kind of a piece of shit [Richardson] really [was]."⁸⁸ Despite this list of allegations, the trial court concluded that the acts were insufficiently abusive or violent to fall under the Act.⁸⁹ Rather, the

77. *Richardson*, 878 A.2d at 1213-14.

78. *Id.* at 1214-15.

79. *Id.*

80. *Id.* at 1215.

81. *Id.* at 1216.

82. D.C. CODE § 16-1001(5)(A) (2006).

83. D.C. CODE § 16-1001(5)(B) (2006).

84. *Richardson*, 878 A.2d at 1216-17.

85. *Id.* at 1216.

86. *Id.* at 1215 n.4.

87. *Id.*

88. *Id.*

89. *Id.* at 1216.

court seemed to conclude that many of the actions were defamatory, and as a result not criminal.⁹⁰

The District of Columbia Appellate Court rejected the trial court's restrictive reading of the statute and reversed its conclusion on de novo review.⁹¹ It suggested that the allegations could have constituted stalking, emotional violence, or intentional infliction of emotional distress.⁹² The court agreed with the trial judge that if Richardson had alleged only that Easterling defamed him, there would have been no criminal conduct to invoke the Act.⁹³ However, where the trial court saw only defamation, the appellate court concluded there was actionable abuse.⁹⁴

This case demonstrates one of the shortfalls of domestic violence statutes as they are applied to same-sex relationships. Societal homophobia is another "arsenal of terror" in a same-sex relationship.⁹⁵ Efforts to "out" a victim may be one of the primary acts of abuse in such relationships. Significantly, Easterling allegedly contacted Richardson's colleagues and family members. The underlying assumption associated with Easterling's conduct is that Richardson will lose status or prestige if he is identified as a homosexual man, moreover, one who is HIV-positive. Abuse in heterosexual relationships might include threats to humiliate the victim, ruin a reputation, or disclose embarrassing information. Yet there is a distinction between that situation and what is presented in this case. American society does not stigmatize heterosexual relationships, it praises and protects them.⁹⁶ Easterling threatened to reveal routine information — that Richardson had been in a relationship with him. But because of homophobia, this revelation took on an increased abusive aspect. Similarly, the stigma and stereotypes associated with the AIDS virus make threats to reveal the diagnosis uniquely abusive. Richardson was able to appeal the decision, but an individual with lesser means may not have had the same opportunity, in which case the trial court's erroneous, rigid understanding of the law would have stood. Ideally, homophobia would not exist; however, so long as it does domestic violence laws should explicitly recognize that abuse may take on the characteristics of the abuse at issue here.

B. HOMOPHOBIA IN THE SYSTEM

Judges and police officers do not make decisions in a vacuum. Biases against the LGBT community or misunderstandings of issues unique to abuse in these relationships can lead to lax enforcement of restraining

90. *Richardson*, 878 A.2d at 1217.

91. *Id.*

92. *Id.* at 1217-18.

93. *Id.* at 1218.

94. *Id.* at 1217.

95. Lundy, *supra* note 19, at 282.

96. Colker, *supra* note 7, at 1841.

orders, issuance of mutual restraining orders, failure to recognize abuse, and more. In this section, two case studies will explicitly demonstrate this problem. In the first case, a trial judge bares his strong bias against lesbians to the parties and the reviewing court. In the second, a trial judge dismisses evidence of abuse in a gay male relationship because the abuser had interspersed personal favors and gifts with the abuse.

While on probation for dealing in stolen property, Robbyn Rucks and her live-in female partner's 17-year-old daughter began to argue about chores.⁹⁷ The argument became physical and the police were called.⁹⁸ Rucks was charged with misdemeanor assault for domestic violence, thereby violating the terms of her probation.⁹⁹ Following an evidentiary hearing that included conflicting testimony of whether Rucks or the daughter had instigated the physical argument, Rucks was confined in the local jail.¹⁰⁰ Rucks then filed a motion to disqualify the judge who presided over the hearing because of remarks he made in the courtroom. After the conclusion of testimony the judge stated, "I'll tell you, ma'am. This is a sick situation."¹⁰¹ Followed by, "I've seen a lot of sick situations since I've been in this court. I've been in this profession for 27 years and this ranks at the top."¹⁰² He made a third similar statement and upon announcing the sentence said, "[i]f this is the family of 1997, heaven help us."¹⁰³

Florida law provides for the removal of a judge where the party shows, through a motion and affidavit, that she has a well-founded fear that she will not receive a fair trial at the hands of the judge.¹⁰⁴ Rucks' motion noted that the assault at issue inflicted only minor injuries and the dispute was a routine one.¹⁰⁵ Aside from the homosexual nature of the relationship underlying the dispute, what could have so severely offended the experienced judge? The reviewing court did not directly answer that question; it determined instead that Rucks had a reasonable apprehension that something other than her probation violation or the argument with her partner's daughter motivated the judge and that her fear of an unfair result was well-founded.¹⁰⁶

Reported cases are unlikely to show such outright homophobia as this case arguably does. However, there are examples of cases in which courts have reached conclusions in same-sex situations that seem improbable. Arguably, social assumptions about relationships and homosexuality

97. *Rucks v. State*, 692 So. 2d 976 (Fla. Dist. Ct. App. 1997).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.* at 977.

102. *Id.*

103. *Id.*

104. *Id.* (citing *Cave v. State*, 660 So. 2d 705, 708 (Fla. 1995)).

105. *Id.* at 977.

106. *Id.*

underlie these anomalous decisions.

Michael Moore dated Richard Bentley, and the couple lived together in Ohio for four months.¹⁰⁷ In a petition for a civil protective order, Moore alleged that Bentley was continually abusive for two months of the relationship; he threatened Moore with a knife, grabbed him by the chin, and pushed him.¹⁰⁸ Ohio's civil domestic violence statute prohibits recklessly causing or attempting to cause physical harm, causing child abuse or sexual abuse, or placing another in fear of imminent serious physical harm through threat of force.¹⁰⁹ The statute applies to family or household members, which can include a current spouse, former spouse, or person living as a spouse or a person linked by parentage to a current spouse, former spouse, or person living as a spouse.¹¹⁰ Moore received a temporary protective order under the statute, but at a full hearing the court denied him a permanent order.¹¹¹

The reviewing court's short opinion does not address whether or not Moore falls under the class of persons covered by the statute; it appears to assume that he does. Instead, the court focuses on the alleged abuse and upholds the trial court's determination that the weight of credible evidence does not suggest that Moore was in fear of imminent serious physical harm.¹¹² Specifically, the court concluded:

Although appellant filed a police report stating appellee pushed him, appellant continually brought appellee lunch, up to the day before filing this matter, attended a public gathering together, and bought him flowers the day prior to the filing of this action. This behavior undermines a finding that appellant was in fear of imminent serious physical harm.¹¹³

As in *Rucks*, it is difficult to speculate on the court's exact motivations. Here, the reviewing court was bound by the rule that "judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed."¹¹⁴ Given the evidence on de novo review, the court may have decided the outcome differently. Nevertheless, it upheld a determination that Bentley could rebut evidence of abuse by showing that Moore continued to interact with Bentley despite Moore's claims of abuse.¹¹⁵ This understanding of domestic violence represents an

107. *Moore v. Bentley*, No. 03-AP-1003, 2004 WL 2804785, at *1 (Ohio Ct. App. Sept. 23, 2004).

108. *Id.*

109. OHIO REV. CODE ANN. § 3113.31(A)(1) (West 2005).

110. OHIO REV. CODE ANN. § 3113.31(A)(3) (West 2005).

111. *Moore*, 2004 WL 2804785 at *1.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

out-dated belief that an abuser can never present a calm front and that physical abuse must be constant. Courts have not required that survivors of domestic violence in heterosexual relationships show such an extreme level of abuse to qualify for protective orders. On the contrary, research indicates that abuse often occurs in cycles, with periods of abuse followed by "honeymoon" periods, where the abuser will apologize, attempt to gain forgiveness, and promise to cease the abusive behavior.¹¹⁶

These cases demonstrate what anecdotal evidence has suggested,¹¹⁷ that homophobia operates to further distance an LGBT domestic violence survivor from support structures or legal protection. Judges and juries do not act in complete isolation from their personal biases. Absent explicit language mandating that domestic violence laws apply with equal force to relationships of all sexualities, these biases will present barriers to LGBT victims. It is vital that laws address — and, where possible, dismantle — the additional hurdles facing LGBT abuse survivors.

C. RIGID FORMALISM – AMBIGUITY AND UNCONSTITUTIONALITY

Berkley C. Nixon was indicted in 2005 for violating Ohio's criminal domestic violence statute, resisting arrest, and obstructing official business.¹¹⁸ The indictment arose from an incident involving his live-in girlfriend, in which he allegedly knowingly caused or attempted to cause physical harm to a household or family member.¹¹⁹ Nixon pled not guilty and moved to dismiss the domestic violence charge, claiming it was unconstitutional in light of the state constitution's Marriage Protection Amendment.¹²⁰ The trial court denied his motion, finding orally on the record that the domestic violence statute was constitutional; Nixon then pled no contest to the charges and was sentenced.¹²¹

Nixon refined his argument on appeal, arguing that the statute violated the constitutional amendment, which states:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. This state and its political subdivisions shall not create or recognize

116. See LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 95-97 (Springer Publishing Company 1984). See also Sara Buel, *Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct*, 26 HARV. WOMEN'S L.J. 217 (2003) (referring to Walker's cycle of violence theory). While acknowledging and agreeing with arguments that gender stereotyping inherent in the Battered Woman Syndrome theory limit its usefulness, and noting that every relationship will not exhibit the three stages — escalation, abuse, honeymoon — this Note merely points out that courts have consistently recognized the ups-and-downs of abusive relationships in contexts different from that presented here.

117. Lundy, *supra* note 19, at 287-88.

118. *State v. Nixon*, 845 N.E.2d 544, 546 (Ohio Ct. App. 2006).

119. *Id.*

120. *Id.*

121. *Id.*

a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance or effect of marriage.¹²²

The Ohio criminal domestic violence statute, similar to the civil statute at issue in *Rucks*, prohibits abuse of a family or household member.¹²³ “Family or household member” is further defined as a current or former spouse, a person living as spouse, or a parent or child of one of those persons, any of whom must reside or have resided with the offender.¹²⁴ “Person living as a spouse” is a “person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.”¹²⁵ The appellate court for Ohio’s Ninth Appellate District agreed with the trial court that the amendment and the domestic violence statute could coexist.¹²⁶ The amendment related to the legal status of marriage as an institution, but for the purposes of the domestic violence law, marriage as a legal institution is immaterial.¹²⁷ The court found that Nixon and his girlfriend were “living as” spouses, so as to fall under the statute, but found that this statutory requirement was “merely descriptive in character.”¹²⁸ The identification did not create a legal status intending to approximate marriage.¹²⁹ The court emphasized that the purpose of the statute was to hold abusers accountable and provide protections for victims, whether they are heterosexual or homosexual.¹³⁰ The purposes of the Marriage Protection Amendment would be thwarted only if the statute attempted to “infringe on the significance or effect of the institution of marriage itself.”¹³¹

Other Ohio appellate courts have reached conclusions that differ from the court in *State v. Nixon*. In March 2006, the Second Appellate District held that the clause of the criminal statute on domestic violence extending protection to a “person living as a spouse” violated the Marriage Protection Amendment.¹³² There, Karen Ward challenged her indictment for assaulting her live-in boyfriend, using arguments similar to those made by Berkley Nixon.¹³³ The court held that the statute bestowed a benefit of

122. OHIO CONST. ART. XV, § 11.

123. OHIO REV. CODE ANN. § 2919.25(A) (West 2006).

124. *Id.* § 2919.25(F)(2).

125. *Id.*

126. *Nixon*, 845 N.E.2d at 547.

127. *Id.* at 547-48.

128. *Id.* at 548.

129. *Id.*

130. *Id.* at 548-49.

131. *Id.* at 549.

132. *State v. Ward*, 166 Ohio App. 3d 188, 196 (2006).

133. *Id.* at 189.

marriage, namely protections against domestic violence. This violated the constitutional amendment's prohibition on giving such status to relationships approximating "the design, qualities, significance or effect of marriage."¹³⁴ Holding otherwise would give no meaning to the second sentence of the Amendment and create an unworkable jurisprudence. The court envisioned that piecemeal recognition of non-traditional spouses would lead to a point in which the only privilege of marriage reserved for actual married couples would be an income tax reduction.¹³⁵ The court reasoned that the factors used to identify persons living as spouses essentially define a marriage relationship.¹³⁶ Therefore, the protections granted through the domestic violence statute are exactly the type of state recognition that the citizens of Ohio intended to prohibit.¹³⁷ The court suggested that most relationships covered by the clause could be included under other clauses of the statute, and further suggested that the General Assembly amend the statute to protect "persons sharing residential quarters,"¹³⁸ thereby reaching the quasi-marital relationships that the clause was intended to cover.

The decision in *State v. Ward* has since been appealed, and a motion to certify was granted on August 2, 2006.¹³⁹ The Ohio situation presents a double whammy to LGBT victims of domestic violence. In states where constitutional amendments bar the legal recognition of LGBT relationships through marriage, it can be concluded that protection by way of criminal and civil domestic violence statutes will be unavailable.¹⁴⁰ Similarly, if current statutory language limits the right to marry, the rule of interpretation that assumes more recent statutes trump older ones may be read to limit protection under domestic violence laws. The court in *Nixon* held the purpose of the Marriage Protection Amendment was to prohibit state recognition of same-sex marriage and to stave off court decisions such as *Goodrich v. Department of Health*, the Massachusetts Supreme Court case that extended marriage to same-sex partners.¹⁴¹ The Marriage Protection Amendment was to have no bearing on criminal laws.¹⁴² However, one of the privileges of marriage is protection from abuse by a partner through the civil system; a privilege that some courts have held cannot be extended to same-sex partnerships.

134. *Ward*, 166 Ohio App. 3d at 193.

135. *Id.* at 193-94.

136. *Id.* at 195.

137. *Id.*

138. *Id.*

139. *State v. Ward*, 110 Ohio St. 3d 1438 (2006).

140. Ohio's civil and criminal domestic violence statutes use the same definition of "family or household member" to define the parameters of the laws. See OHIO REV. CODE ANN. §§ 2919.25, 3113.31 (West 2006).

141. *State v. Nixon*, 845 N.E.2d 544, 546 (Ohio Ct. App. 2006).

142. *Id.*

Ohio's Supreme Court responded to more than twenty cases, including *State v. Ward*, on the issue in *In re Ohio Domestic-Violence Statute Cases*.¹⁴³ The Court held that the domestic violence law and constitutional amendment were not in conflict.¹⁴⁴ It reasoned that the amendment prohibited the state from bestowing new legal rights or creating legal relationships approximating the design, quality, or significance of marriage.¹⁴⁵ The domestic violence statute did not create any additional legal rights or benefits, but rather created a subset of potential victims.¹⁴⁶ Therefore, the statute did not establish a "quasi-marital relationship" that violated the purposes of the marriage amendment.¹⁴⁷

Although Ohio courts have resolved this issue in favor of protection, Ohio is not the only state facing this legal situation. Pennsylvania, Indiana, and West Virginia each have statutes covering domestic violence that occurs in the context of a "spouse-like" relationship.¹⁴⁸ All three also prohibit same-sex marriage by statute, although not by constitutional amendment.¹⁴⁹

Virginia's Attorney General issued a pre-emptive policy opinion at the request of lawmakers at the same time the state legislature was considering a constitutional amendment prohibiting same-sex unions.¹⁵⁰ The amendment, which was passed and chaptered in May 2006, prohibits the state from creating or recognizing "a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, or effects of marriage," or from creating or recognizing "another union, partnership, or other legal status" with the rights, benefits, or effects of marriage.¹⁵¹ Virginia also has statutes prohibiting marriage between people of the same sex, civil unions, or other partnerships purporting to bestow the privileges of marriage on same-sex couples.¹⁵² Virginia's domestic violence statute protects spouses or former spouses and people who are cohabitating.¹⁵³ The Attorney General reasoned that in extending protections to cohabitants, the Virginia Legislature clearly "wished to establish a new and distinct class of potential domestic violence victims

143. *In re Ohio Domestic-Violence Statute Cases*, 872 N.E.2d 1213 (Ohio 2007).

144. *State v. Carswell*, 871 N.E.2d 547, 554 (Ohio 2007).

145. *Id.*

146. *Id.* at 553.

147. *Id.* at 554.

148. Colker, *supra* note 7, at 1859.

149. See IND. CODE ANN. § 31-11-1-1 (West 1999 & Supp. 2007); 23 PA. CONS. STAT. §§ 1102, 1704 (2006); W. VA. CODE ANN. § 48-2-603 (2004). See also Colker, *supra* note 7, at 1890-97.

150. 2006 Op. Va. Att'y Gen. 34 (2006) available at <http://www.oag.state.va.us/opinions/2006opns/06-003Newmanetal.pdf>.

151. 2006 H.J. Res. 41, 2006 sess. (Va. 2006), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=061&typ=bil&val=hj41>.

152. 2006 Op. Va. Att'y Gen., *supra* note 150, at 7-8.

153. *Id.* at 26-27.

among unmarried, cohabitating persons other than spouses.”¹⁵⁴ According to the opinion, this statute is not a recognition of common-law marriage, which is illegal in Virginia, and is similarly not a recognition of same-sex marriage.¹⁵⁵ The opinion notes that the argument raised in Ohio’s *Ward* case could not be made in Virginia because Virginia’s domestic violence statute does not “provide for the establishment of common-law marriage or any other ‘quasi-marital relationship’ within the Commonwealth,” in that it does not contain “living as spouse” language.¹⁵⁶

The constitutional issues raised in Ohio and Virginia are graphic illustrations of the dangers of creating vague, yet rigid, definitions of victims and perpetrators whom domestic violence laws cover. Courts appear to have little discretion under such laws. Parties are included or they are not. Nothing in the statutes permits courts to extend jurisdiction over unlisted relationships in the interest of safety, justice, or to enforce lawmakers’ intentions to prevent abuse. However, because the legislatures have not clearly stated whom these statutes intend to include, courts read the open-ended words of the statutes to confer the benefits of marriage on unmarried couples, violating the state constitution. These efforts to make the laws more general and gender neutral has turned out to give *less* protection for heterosexual and non-heterosexual victims of abuse.

V. CREATING EFFECTIVE DOMESTIC VIOLENCE LAWS

Existing domestic violence statutes fall short of protecting those in abusive LGBT relationships due to homophobia and lack of understanding within law enforcement and legal systems, unique forms of abuse, social sentiment against state recognition of LGBT relationships, and constitutional conflict. Vague notions of spouse-like persons, household members, and dating relationships may be broadly interpreted to include a variety of relationships, but may also provide outs for a court to exclude victims at will.

What, then, would be a better system? If state legislatures are committed to providing the best available protection to all members of society, they must do so explicitly. Statutes should be amended to explicitly cover both opposite-sex and same-sex relationships. Furthermore, definitions of abuse should clarify that abuse may involve any combination of physical abuse and stalking, harassment, emotional and economic control, and isolation. Domestic violence statutes have already been amended to broaden their reach, generally by adding language. For example, California revised its civil domestic violence protections in

154. 2006 Op. Va. Att’y Gen., *supra* note 150, at 30.

155. *Id.*

156. *Id.* at 32 n.58.

1993.¹⁵⁷ At that point, it added the terms “dating relationship” so that the civil and criminal statutes would be in agreement.¹⁵⁸ The legislature also added a section explicitly covering children.¹⁵⁹ The Commission notes explain that this addition clarified the former law, which covered children more obliquely through the word “cohabitant.”¹⁶⁰ States could use similar reasoning to amend domestic violence statutes so that they include “a person of the same or different sex from the perpetrator, with whom the perpetrator has or has had an intimate relationship.” States could also follow the federal government’s lead and extend coverage to “intimate partners” of any gender.

Additionally, the type of abuse covered should be more comprehensive. California’s Domestic Violence Prevention Act takes the positive step of listing many acts that should be considered abuse, including stalking and making harassing telephone calls.¹⁶¹ The District of Columbia’s Intrafamily Offenses Act, at issue in *Richardson v. Easterling*, incorporates stalking in its definition of violence.¹⁶² There is always a danger that a court will conclude a situation does not involve the type of abuse covered by the statute, as the trial court concluded in Dr. Richardson’s situation in *Richardson*.¹⁶³ However, in that case the statute’s broad coverage created the platform on which the reviewing court could base its reversal. Phone calls and threats that did not appear abusive to the lower court fell clearly into the language of the statute, and were therefore a basis for a restraining order.¹⁶⁴

Efforts to explicitly cover all relationships are likely to inspire political opposition. Nancy Knauer notes that anti-gay activists have argued that domestic violence laws that include same-sex relationships legitimize and impart special rights on those relationships.¹⁶⁵ Such arguments find their basis in history and tradition, the Bible, statutory and constitutional bans on same-sex marriage, and laws criminalizing sodomy.¹⁶⁶ The Family Research Council, an organization that champions the institutions of traditional family and marriage, cites data showing high rates of domestic violence in lesbian and gay male relationships to buttress its conclusion that “‘committed’ homosexual relationships are radically different from married couples in several key respects”¹⁶⁷

157. CAL. FAM. CODE ANN. § 6211 Law Revision Commission Cmts. (Deering 2007).

158. *Id.*

159. *Id.*

160. *Id.*

161. CAL. FAM. CODE § 6203 (West 2004); CAL. FAM. CODE § 6320 (West 2004 & Supp. 2008).

162. D.C. CODE § 16-1001(5) (2006).

163. *Richardson v. Easterling*, 878 A.2d 1212, 1213 (D.C. Cir. 2005).

164. *Id.* at 1217.

165. Knauer, *supra* note 22, at 339.

166. *Id.*

167. Timothy Dailey, *Comparing the Lifestyles of Homosexual Couples to Married*

Opposition from conservative circles should not discourage lawmakers from ensuring that the protections they have already decided to extend to same-sex relationships are effective. Lawmakers have often made strong statements that domestic violence of any kind should not be tolerated. For example, when the Colorado legislature passed its mandatory arrest legislation, at issue in *Town of Castle Rock v. Gonzales*, discussed above, one legislator stated, "the entire system must send the same message . . . [that] violence is criminal."¹⁶⁸ Prior to the court's opinion upholding state domestic violence laws, newspaper editorials in Ohio decried the fact that abuse survivors were unable to gain protection under the domestic violence law. The *Columbus Dispatch* urged adoption of an amendment that would have altered the problematic "living as a spouse" language to read "any person who is residing with the offender."¹⁶⁹ Similarly, the *Cincinnati Enquirer* decried the fact that the marriage ban was used to undermine domestic violence laws that had been in place for years.¹⁷⁰ It quoted approvingly a determination by a Cuyahoga County judge that in extending protections to same-sex relationships, "the legislature 'merely acknowledged the reality that, with or without official approval, human beings in Ohio, as elsewhere, will come together in a variety of loving relationships that will sometimes turn violent.'"¹⁷¹ Lawmakers campaigning on "tough on crime" platforms cannot turn their backs on crime victims because of stereotyped impressions of the relationships in which the victims are involved.

VI. CONCLUSION

Domestic violence is an unfortunate reality in some LGBT relationships, just as it is within heterosexual relationships. However, the abuse in these relationships cannot be dealt with by adding an asterisk to domestic violence laws based on heterosexual norms. Societal homophobia, dynamics within the LGBT community, and gender issues make LGBT domestic violence unique. Although gender-neutral domestic violence laws have the positive impact of including some same-sex domestic violence within their broad (and often flawed) protections, this is an imperfect solution. Unique forms of abuse that may arise in same-sex relationships and homophobia among judges and law enforcement must be addressed. Moreover, recently enacted statutes and constitutional amendments banning same-sex marriage threaten to withdraw protections

Couples (Mar. 24, 2004), available at <http://www.frc.org/get.cfm?i=IS04C02>.

168. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 760 n.6 (2005).

169. *Don't Protect Abusers: Domestic Violence Law Must Be Changed So Assaults Bring Tougher Sentences*, COLUMBUS DISPATCH, Sept. 9, 2005, at 16A.

170. Editorial, *Clarify Domestic Violence Laws*, CINCINNATI ENQUIRER, Mar. 28, 2005, at 14B.

171. *Id.*

from LGBT relationships as well as heterosexual, unmarried partners. Lawmakers must face this issue head on. Rigid, formalistic laws that contain vague terms of protection will always be vulnerable to interpretations that leave certain populations out of their scope. If state legislators are truly committed to preventing violence they must explicitly say so, ensuring that the laws they craft will be truly effective.
